

Office of the Independent Police Auditor

Monthly Report

February 2012



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

March 19, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period February 1, 2012 through February 29, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at www.bart.gov/policeauditor.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA ⁴	Number of Cases Appealed by CRB ⁵
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0

Types of Cases Filed

Citizen Complaints	8
Administrative Investigations	4
Comments of Non-Complaint	2
TOTAL	14

Citizen Complaints Received per Department

OIPA	1
BART Police Department	7
TOTAL	8

Complaints/Investigations Initiated During Reporting Period⁶**Actions Taken/# of Days Elapsed⁷**

During the month of February 2012, 1 Citizen Complaint was received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Conduct Unbecoming of an Officer	BART Police Department was notified and an investigation was initiated.	25

During the month of February 2012, 7 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Procedure	An investigation was initiated.	21
2	Conduct Unbecoming an Officer	An investigation was initiated.	25
3	Force	An investigation was initiated.	33
4	Procedure	An investigation was initiated.	35
5	Force	An investigation was initiated.	40
6	Courtesy	An investigation was initiated.	40
7	Force	An investigation was initiated.	47

During the month of February 2012, 4 Administrative Investigations were generated by the BART Police Department:

Investigation #	Nature of Investigation	Action Taken	# of Days Elapsed Since Investigation Initiated
1	Procedure	An investigation was initiated.	20
2	Conduct Unbecoming an Officer	An investigation was initiated.	32

3	Conduct Unbecoming an Officer	An investigation was initiated.	33
4	Procedure	An investigation was initiated.	47

During the month of February 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Procedure	An investigation was initiated.	20
2	Procedure	An investigation was initiated.	30

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of February 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition ⁸	# of Days Elapsed Since Complaint Filed
1 (IA2011-070)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer <u>Police Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	<ul style="list-style-type: none"> • It was determined by BART PD that this complaint raised the same allegations that had already been investigated in Internal Affairs Case #06-C-004; BART PD therefore did not reach a disposition on Internal Affairs Case #2011-070 	250
2 (IA2011-029)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy • Conduct Unbecoming an Officer • Bias-Based Policing 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy – Unfounded • Conduct Unbecoming an Officer – Unfounded • Bias-Based Policing – Unfounded 	313

	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Courtesy (3 counts) • Conduct Unbecoming an Officer (3 counts) • Procedure (2 counts) • Bias-Based Policing 	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Courtesy (Count 1) – Exonerated • Courtesy (Count 2) – Not Sustained • Courtesy (Count 3) – Unfounded • Conduct Unbecoming an Officer (Count 1) – Exonerated • Conduct Unbecoming an Officer (Count 2) – Not Sustained • Conduct Unbecoming an Officer (Count 3) – Unfounded • Procedure (Count 1) – Sustained • Procedure (Count 2) – Unfounded • Bias-Based Policing – Unfounded 	
3 (IA2011-026)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Procedure • Arrest or Detention • Search or Seizure <u>Police Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention • Search or Seizure • Supervision 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Procedure – Exonerated • Arrest or Detention – Exonerated • Search or Seizure – Exonerated <u>Police Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Search or Seizure – Exonerated • Supervision – Exonerated 	322
4 (IA2011-015)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained 	382
5 (IA2011-023)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Neglect of Duty • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Neglect of Duty – Sustained • Courtesy – Exonerated 	406

	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Neglect of Duty • Courtesy (2 counts) • Procedure 	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Neglect of Duty – Sustained • Courtesy (Count 1) – Not Sustained • Courtesy (Count 2) – Exonerated • Procedure – Not Sustained 	
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During the month of February 2012, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated
1 (IA2011-044)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Supervision 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • No Finding 	244

During the month of February 2012, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	# of Days Elapsed Since Comment Filed
1 (IA2012-005)	Procedure	Supervisory Referral ⁹	56
2 (IA2011-076)	Courtesy; Conduct Unbecoming an Officer	Supervisory Referral	118
3 (IA2011-075)	Procedure; Courtesy	Supervisory Referral	119
4 (IA2011-064)	Procedure	Supervisory Referral	158

Complaints/Investigations Concluded Prior to Current Reporting Period**Dispositions/# of Days Elapsed**

1 Citizen Complaint was closed during December 2011; however, it was not reported as such because its status was not fully updated in the BART Police Department's Internal Affairs database until later. Therefore, it is being reported on here.

Complaint # (IA Case #)	Nature of Complaint	Disposition	# of Days Elapsed Since Complaint Filed
1 (IA2010-082)	<u>Police Officer #1</u> <ul style="list-style-type: none">• Courtesy <u>Police Officer #2</u> <ul style="list-style-type: none">• Courtesy <u>Police Officer #3</u> <ul style="list-style-type: none">• Courtesy• Neglect of Duty <u>Police Officer #4</u> <ul style="list-style-type: none">• Courtesy• Neglect of Duty <u>Police Officer #5 (Unable to be identified)</u> <ul style="list-style-type: none">• Search or Seizure	<u>Police Officer #1</u> <ul style="list-style-type: none">• Courtesy – Not Sustained <u>Police Officer #2</u> <ul style="list-style-type: none">• Courtesy – Not Sustained <u>Police Officer #3</u> <ul style="list-style-type: none">• Courtesy – Not Sustained• Neglect of Duty – Sustained <u>Police Officer #4</u> <ul style="list-style-type: none">• Courtesy – Unfounded• Neglect of Duty – Not Sustained <u>Police Officer #5 (Unable to be identified)</u> <ul style="list-style-type: none">• Search or Seizure – Unfounded	444

Data regarding 1 Administrative Investigation that was concluded by the BART Police Department in January 2012 was not available in time for that month's report. Therefore, it is being reported on here.

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated
1 (IA2011-014)	<u>Civilian #1</u> <ul style="list-style-type: none">• Procedure	<u>Civilian #1</u> <ul style="list-style-type: none">• Not Sustained	418

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁵ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁶ Prior to the current report, 2 Citizen Complaints and 1 Comment of Non-Complaint were mistakenly included in the “Number of Open Cases.” A review of the BART Police Department’s Internal Affairs database indicates that these cases had, in fact, been completed prior to the initiation of this series of monthly reports (which covers data back to June 27, 2011). It appears that an audit conducted by the BART Police Department’s Office of Internal Affairs in October 2011 led them to reopen these cases in their database in order to affirm that the involved parties had received appropriate notification of the outcomes of their respective cases; although the cases were marked as re-opened for this purpose, they were not marked as re-closed until recently. OIPA has now removed them from the “Number of Open Cases” and is not aware of any other similarly-situated cases awaiting re-closing.

⁷ In all cases where it appears in this report, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁸ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

⁹ In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.